

1 The Honorable Jamal N. Whitehead  
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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEJAVUAI, INC., a Washington corporation,

Plaintiff/Counter-  
Defendant,

v.

FYODOR “TED” KAPUSTIN aka FYDOR  
“TED” KAPUSTINE, an individual.,

Defendant/Counter-  
Plaintiff.

No. 2:25-cv-00915

DEJAVUAI’S REPLY IN SUPPORT OF  
MOTION TO COMPEL ARBITRATION  
AND STAY CERTAIN CLAIMS

**ARGUMENT ON REPLY**

On June 27, 2025, Plaintiff/Counter-Defendant DejaVuAI, Inc. (“DejaVuAI”) filed a Motion to Compel Arbitration and Stay Certain Claims (the “Motion”), Dkt 37, in lieu of an answer to Defendant/Counter-Plaintiff Fyodor Kapustin’s Answer and Counterclaim, Dkt 28. The Motion requested that the Court stay proceedings on Mr. Kapustin’s Counterclaim (Unjust Enrichment) and Counts III (Breach of Proprietary Information and Invention Assignment Agreement (“PIIAA”)) and V (Misappropriation of Trade Secrets) and compel the parties to arbitrate these claims pursuant to the mandatory arbitration clause in § 10(a) of the PIIA. *See* Declaration of Johnny Kessler, Ex. D, Dkt 38-4 at 6.

DejaVuAI noted the present Motion for consideration on July 25, 2025, in compliance with the Local Civil Rules. LCR 7(d)(4). The Rules further required Mr. Kapustin to file and serve DEJAVUAI’S REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY CERTAIN CLAIMS CASE NUMBER 2:25-CV-00915 - 1

1 opposition papers no later than July 18, 2025. *Id.* (“Any opposition papers shall be filed and  
 2 received by the moving party no later than 21 days after the filing date of the motion.”). Mr.  
 3 Kapustin did not file or serve opposition papers by that deadline.

4 Pursuant to LCR 7(b)(2), “if a party fails to file papers in opposition to a motion, such  
 5 failure may be considered by the court as an admission that the motion has merit.” DejaVuAI,  
 6 accordingly, submits that the Court should grant the present Motion.

7 It is now apparent, however, that an interaction of procedural rules and prior rulings will  
 8 result in the present Motion becoming ripe for decision before the currently pending preliminary  
 9 injunction proceedings are resolved.<sup>1</sup> Because the preliminary injunction involves issues and a  
 10 claim that would be stayed upon entry of an order granting the present Motion, DejaVuAI  
 11 respectfully requests that the Court grant the Motion but hold its ruling in abeyance until all  
 12 requests for preliminary relief are definitively resolved.

13 **CONCLUSION**

14 For the foregoing reasons and those in the Motion to Compel Arbitration and Stay Certain  
 15 Claims, DejaVuAI respectfully requests that, upon resolution of the pending preliminary  
 16 injunction proceeding and confirmation from the parties that no further requests for preliminary  
 17 relief are anticipated, the Court stay and compel arbitration on Mr. Kapustin’s Counterclaim and  
 18 Counts III and V of DejaVuAI’s Complaint.

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21 <sup>1</sup> DejaVuAI could not wait to move to compel arbitration until preliminary relief questions were definitively resolved  
 22 because Mr. Kapustin’s Answer and Counterclaim triggered a 21-day deadline for DejaVuAI to file a responsive  
 23 pleading or motion, *see* Fed. R. Civ. P. 12(a)(1)(B), and DejaVuAI would risk waiving its arbitration rights if it filed  
 24 a substantive answer or otherwise litigated the merits of the arbitrable counterclaim. *See Armstrong v. Michaels Stores,*  
*Inc.*, 59 F.4th 1011, 1015 (9th Cir. 2023) (a party generally waives a known right to mandatory arbitration “when it  
 25 (1) makes an intentional decision not to move to compel arbitration and (2) actively litigates the merits of a case for a  
 26 prolonged period of time”). After he filed his Answer and Counterclaim, Mr. Kapustin obtained a 30-day extension  
 of his deadline to respond to the Court’s order to show cause regarding converting its Temporary Restraining Order  
 into a preliminary injunction. Minute Order, Dkt 33. Mr. Kapustin’s new deadline fell several weeks after DejaVuAI’s  
 deadline to file the present Motion in response to his Counterclaim, which resulted in DejaVuAI’s request to stay  
 proceedings on certain claims becoming ripe for decision while its request that Mr. Kapustin be preliminarily enjoined  
 based on one of those claims remained pending.

DEJAVUAI’S REPLY IN SUPPORT OF MOTION TO COMPEL ARBITRATION  
 AND STAY CERTAIN CLAIMS  
 CASE NUMBER 2:25-CV-00915 - 2

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1 DATED this 25th day of July, 2025  
2

3 Respectfully submitted,  
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5 K&L GATES LLP  
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7 By: /s/ Spencer McCandless  
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**CERTIFICATE OF SERVICE**

I certify that on this date I arranged for a copy of the foregoing document to be served on the parties listed below as indicated:

**VIA ELECTRONIC COURT SERVICE**

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DATED this 25th day of July, 2025.

Respectfully submitted,

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